

1 MICHAEL L. MALLOW (SBN 188745)
mmallow@loeb.com
2 CHRISTINE M. REILLY (SBN 226388)
creilly@loeb.com
3 MEREDITH J. SILLER (SBN 278293)
msiller@loeb.com
4 LOEB & LOEB LLP
10100 Santa Monica Boulevard, Suite 2200
5 Los Angeles, California 90067-4120
Telephone: 310-282-2000
6 Facsimile: 310-282-2200

7 Attorneys for Defendants
EDebitPay, LLC, Platinum Online
8 Group, LLC, Dale Paul Cleveland, and
William Richard Wilson
9

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 ANITA WHITE; DEBORAH
DEFFENBAUGH; and DANNIE
15 BRASWELL, individually and on
behalf of all similarly situated persons,

16 Plaintiffs,

17 v.

18 EDEBITPAY, LLC, a Nevada
19 corporation; PLATINUM ONLINE
GROUP, LLC, a California corporation;
20 DALE PAUL CLEVELAND, an
individual; WILLIAM RICHARD
21 WILSON, an individual; DIRECT
BENEFITS GROUP, LLC (d/b/a/
22 UNIFIED SAVINGS), a Wyoming
Corporation; LANDMARK
23 CLEARING, INC., a Texas corporation;
and FIRST BANK OF DELAWARE, a
24 Delaware corporation,

25 Defendants.
26
27
28

Case No.: CV11-06738 (FFMx)

Assigned to the Hon. Consuelo B.
Marshall

**DECLARATION OF
SETTLEMENT
ADMINISTRATOR IN SUPPORT
OF DEFENDANTS' OPPOSITION
TO THE FEDERAL TRADE
COMMISSION'S AMICUS
CURIAE BRIEF**

Date: September 9, 2013

Time: 11:00 a.m.

Courtroom: 2 (Spring Street)

1 I, Patrick Passarella, declare as follows:

2 1. I am the Senior Vice President of Class Action Services at Kurtzman
3 Carson Consultants LLC (“KCC”), the Settlement Administrator appointed by the
4 Court in this matter. I am over 21 years of age and am not a party to this action. I
5 have personal knowledge of the facts set forth herein and, if called as a witness,
6 could and would testify competently thereto. This declaration is made in support of
7 Defendants’ Opposition to the Federal Trade Commission’s Amicus Curiae Brief.

8 2. I have over 20 years of experience in class action settlement
9 administration. Over the course of my career, I have managed more than 500 class
10 action settlements and am an expert in claims processing and class member
11 communications.

12 3. Pursuant to the Court’s May 20, 2013, Order Certifying Settlement
13 Class and Preliminarily Approving Class Action Settlement, KCC was appointed as
14 the Settlement Administrator in this action and was charged with disseminating
15 notice to the settlement class and administering the settlement. The class notice
16 procedures in this case consisted of the following: Short Form Notice by email,
17 Long Form Notice, a designated Settlement Website, and Publication Notice in USA
18 Today.

19 4. On June 3, 2013 and June 10, 2013, KCC caused a copy of the Short
20 Form Notice, in substantially the same form as filed with the motion for preliminary
21 approval in this matter, to be published in a 1/8 page black and white advertisement
22 in the “Market Trends” section of USA Today. In my experience as a Settlement
23 Administrator, it is common to use Publication Notice in a popular, widely—
24 circulated newspaper such as USA Today to supplement other forms of notice. This
25 form of publication notice is commonly used in class action settlements to provide
26 additional reach amongst class members.

27 5. Prior to May 29, 2013, KCC created and launched a Settlement
28

1 Website. The website, located at www.edebitpaysettlement.com, is still operative
 2 today, and contains an online Claim Form, as well as copies of the Class Notice,
 3 Publication Notice, the Settlement Agreement, the Preliminary Approval Motion
 4 and Preliminary Approval Order, and documents filed in support of the Motion for
 5 Final Approval. The website also contains a “Frequently Asked Questions” section
 6 that describes the class action settlement and explains the various options class
 7 members may choose from. Finally, the website contains contact information for
 8 KCC and class counsel, as well as important dates relevant to the settlement. KCC
 9 has monitored the Settlement Website and the claim forms submitted through the
 10 website since the website’s establishment. KCC also regularly monitored the
 11 designated post office box for claim forms submitted by U.S. Mail throughout the
 12 claims period.

13 6. In preparing for an email campaign, KCC does everything possible to
 14 maximize the deliverability of the emails. This includes reaching out to ISP
 15 providers prior to launching a campaign, and making sure that our IP addresses have
 16 a high rating with ISP providers. It is important that an IP address have an
 17 acceptable rating to avoid being blocked by ISP providers. Here, we also carefully
 18 crafted the subject lines to ensure that they were explicit and did not contain words
 19 or formatting that typically flag them as spam. For instance, marking an email as
 20 urgent or adding all caps to a subject line increases the likelihood that it will get
 21 flagged as spam. We ensured that the subject lines in the electronic notice here did
 22 not include such language or formatting.

23 7. The Short Form Notice was sent electronically to all settlement class
 24 members on two separate occasions in order to maximize outreach to the settlement
 25 class. KCC made the first email distribution of the Short Form Notice on June 21,
 26 2013. The Short Form Notice was sent to 1,168,348 unique email addresses. Of the
 27 1,168,348 emails sent: 808,732 emails were delivered (69.22%); 312,199 were hard
 28

1 bounces (26.72%), which are emails returned to the sender as permanently
2 undeliverable; 8,795 were soft bounces (0.76%), which are emails delivered to the
3 recipient's mail server but are bounced back undelivered before reaching the
4 intended recipient; and 38,622 were block bounces (3.3%), which are emails
5 rejected by the email server and not delivered to the intended recipient for a variety
6 of reasons. ISP providers can choose to accept but not deliver emails to the intended
7 recipients and each ISP provider's rules for blocking emails vary.

8 8. The second email distribution of the Short Form Notice was made on
9 July 24, 2013. Although not required by the Court's Order, this supplemental email
10 distribution was requested by the parties to ensure that as many class members as
11 possible received notice. KCC sent the Short Form Notice via email to the entire
12 settlement class with the exception of (1) the hard and block bounce emails, both of
13 which were permanently undeliverable, and (2) certain email addresses for which
14 we were able to positively confirm recipients received and opened the Short Form
15 Notice (certain email servers and recipients provide read receipts). Specifically, for
16 the second email distribution, KCC sent the Short Form Notice to 807,917 unique
17 email addresses. Of the 807,917 emails sent, 796,917 were delivered (98.6%),
18 6,225 were hard bounces (.77%), 127 were soft bounces (.02%), and 4,648 were
19 block bounces (0.5%).

20 9. KCC has currently accrued a total of \$85,015.00 to date in settlement
21 administration costs, including but not limited to creation of the Settlement Website,
22 the sending of CAFA notice to the attorneys general, distribution of both Short Form
23 Notice email campaigns, Publication Notice in USA Today, and claim form
24 processing. The total cost for notice in this case was approximately \$52,405.18,
25 consisting of around \$28,690 for Publication Notice, and \$23,715.18 for electronic
26 notice. KCC estimates that an additional \$14,700 will accrue in administration costs
27 primarily related to issuing disbursements to settlement class members who
28

1 submitted timely and valid claim forms. The total estimated cost of administration
2 of this class action settlement is \$99,715.

3 10. KCC investigated the cost of providing notice to the settlement class
4 via U.S. Mail, first class, postage prepaid. A traditional First-Class U.S. mailing to
5 the 1,168,348 settlement class members would have cost over \$618,000. A postcard
6 mailing to the 1,168,348 settlement class members would have cost over \$438,000.
7 In my opinion, it would not have practicable from a cost perspective to give mail
8 notice in this case given the financial constraint of the \$1,000,000 settlement fund.

9 11. Taking into account the size of the settlement fund, the size of the class,
10 and the costs of giving notice, email notice was reasonable in this case, and is
11 consistent with notice given in other similar settlements I have seen.

12 12. Based on my experience and other settlements I am aware of, the
13 statistics in this case including the claims rate are not atypical of statistics we have
14 seen in past cases.

15 13. Moreover, it is common practice to require class members to submit
16 requests for exclusion in writing via U.S. mail. Requiring settlement class members
17 to submit something in writing that they have signed helps to ensure that false or
18 fraudulent opt outs are not submitted. In this case, KCC did not receive any
19 requests for exclusion by any means, including mail, telephone, or electronically.
20 KCC did not receive any objections to the proposed settlement either.

21 I declare under penalty of perjury of the laws of the California that the
22 foregoing is true and correct.

23 Executed on August 30, 2013 in Novato, California.

24
25 
26 PATRICK PASSARELLA
27
28